

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 20-cr-20413

Plaintiff,

v.

Hon. Linda V. Parker

D-1 ERIC J. SMITH,

Defendant.

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DEFENDANT’S MOTION TO ADJOURN THE SENTENCING HEARING

NOW COMES Defendant Eric J. Smith, by and through his attorneys, Clark Hill PLC, and presents to this Honorable Court his Motion to Adjourn the Sentencing Hearing pursuant to Fed. R. Crim. P. 32(b) and 47(a):

Mr. Smith is scheduled to be sentenced by the Court on November 16, 2021, at 2:00 pm. Mr. Smith’s sentence follows the tendering of his Rule 11 guilty plea to one count of obstruction of justice. Mr. Smith and the government both sought to have the sentencing occur in an in-person setting before the Court.

Throughout the pendency of this case, Mr. Smith has been contesting the allegations contained in the Michigan Department of Attorney General’s (the “Attorney General’s Office”) ten (10) count Complaint filed on or about March 24, 2020.¹ Among other charges, the Attorney General’s Office alleges that Mr. Smith

¹ The Attorney General’s Office filed its Third Amended Complaint on July 6, 2021.

was the head of a criminal enterprise comprised of other individuals and the Macomb County Prosecutor's Office.

In July of 2021, the Court advised the parties that the first available date for an in-person sentencing hearing would be August 5, 2021. Mr. Smith's undersigned counsel advised the Court that while the preliminary examination of the charges brought by the Attorney General had commenced, the examination was being continued to August 16 and 17. Counsel for Mr. Smith expressed to the Court a desire to schedule the sentencing for a date in October of 2021 so as to accommodate both the defense and the government. The government joined the defense's request to schedule the sentencing in October due to its own congested trial calendar. On August 9, the Court docketed the sentencing hearing for October 6, 2021.

Shortly after the Court's scheduling of the sentencing hearing, counsel for the defense was alerted by the state district court that the previously scheduled preliminary examination hearing dates of August 16 and 17 would have to be rescheduled due to a conflict with the state district court's schedule. The state district court rescheduled the preliminary examination hearings for October 8 and 21, 2021. The parties in the state case anticipated concluding the preliminary examination on October 21. The rescheduling of the examination dates was brought to the attention of this Court and the sentencing hearing was rescheduled for November 16, 2021.

The preliminary examination hearing on October 8 was canceled due to a COVID precaution raised by the Attorney General's Office. The state district court continued the preliminary examination to October 21. The Attorney General's Office later raised a concern about continuing the hearing on October 21. Mr. Smith's counsel and co-defendant's counsel countered that both parties would be ready to proceed with the hearing on October 21.

Testimony did, in fact, resume on October 21. But the pace of the testimony has been anything but breakneck or even methodical. At the conclusion of the testimony on October 21, counsel for the two defendants sought an additional two days of testimony to conclude the preliminary examination hearing. The Attorney General's Office sought two more days of testimony. To date, the preliminary examination is now scheduled for four additional days to conclude on December 10, 2021.

Mr. Smith now seeks from this Court an adjournment of the November 16, 2021 sentencing hearing for the same reason sought in his previous requests for adjournment: to be sentenced after the conclusion of the preliminary examination in the state case. Mr. Smith continues his belief that it is in the best interests of justice for the Court to sentence him if and when the Attorney General's Office meets its preliminary evidentiary threshold on the allegations contained in its Complaint.

Pursuant to LR 7.1(a)(2)(A), Counsel for Mr. Smith sought concurrence with the government in the relief requested in this motion. On November 2, 2021, the United States Attorney's Office advised counsel for Mr. Smith that concurrence would not be given.

WHEREFORE Defendant Eric J. Smith respectfully requests that this Honorable Court adjourn the sentencing hearing to a date no sooner than January 3, 2022.

Respectfully submitted,

CLARK HILL PLC

By: /s/ John D. Dakmak

Martin E. Crandall (P26824)

John D. Dakmak (P58210)

500 Woodward Avenue, Suite 3500

Detroit, Michigan 48226

(313) 965-8300

mcrandall@clarkhill.com

jdakmak@clarkhill.com

Attorneys for Defendant

Date: November 2, 2021

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BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO ADJOURN THE SENTENCING HEARING

Defendant Eric J. Smith relies on the facts and law contained in his Motion to Adjourn the Sentencing Hearing.

Respectfully submitted,

CLARK HILL PLC

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Detroit, Michigan 48226

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mcrandall@clarkhill.com

jdakmak@clarkhill.com

Attorneys for Defendant

Date: November 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2021, my secretary electronically filed the foregoing paper with the Clerk of the Court using the ECF system that will send notification of such filing to all counsel of record.

CLARK HILL PLC

By: /s/ John D. Dakmak

John D. Dakmak ((P58210)

500 Woodward Avenue, Suite 3500

Detroit, MI 48226

(313) 965-8300

jdakmak@clarkhill.com

Attorneys for Defendant